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Supreme Court, U.S.
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No. 01-1710

IN THE

Supreme Court of the United States

EMPIRE HEALTHCHOICE, INC.,

Petitioner,

v.

JOHN F. BYRNES, *et al.*,

Respondents,

-and-

IRMA M. ALICEA, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUPPLEMENTAL BRIEF FOR RESPONDENTS

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We are writing for the purpose of advising the Court that we endorse the arguments and conclusions set forth in the Brief of the United States as Amicus Curiae, with one reservation. While we agree with the substance of the arguments set forth in the government's brief, we do not believe that certiorari is warranted in this particular case for the following reasons:

1. Denial of the writ will leave standing the decisions of the Second Circuit with which the United States is in accord; and that would be the law of the Second Circuit, which all other circuits will be free to follow or adopt;

2. The Second Circuit's opinion on the fiduciary issue follows this Court's holding in *Varity Corp. v. Howe*, 516 U.S. 489 (1996); and

3. A decision on the particular facts of this case (which involves life insurance – the cost of which is readily and predictably determined) would not open the floodgates of litigation, because under the facts of this case, regardless of which standard the Court applies on the contractual issue, the respondents should prevail.

Petitioner attempts to deflect the Court's attention from the clear and rational reasoning of the government's arguments by arguing that welfare plan benefits differ from pension benefits. This argument utterly misses the point. The question is not whether welfare benefits should be treated differently than pension benefits. The question here is whether, if an employer voluntarily offers vested benefits in return for longtime service, the employer is to be held to its

contractual obligation. Petitioner's efforts, noted by the government, to misinterpret prior case holdings and to intertwine a multitude of non-issues into the questions presented, cannot alter the basic case law and conclusions set forth in the government's brief.

Respectfully submitted,

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